

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.474 OF 1997

WITH

CIVIL APPLICATION NO.12133 OF 1998

IN

SPECIAL CIVIL APPLICATION NO.474 OF 1997

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

AMICHAND M. ADHWAN

Versus

BANASKANTHA DISTRICT PANCHAYAT

Appearance:

1. Special Civil Application No. 474 of 1997
MR SANJAY M DOSHI for Petitioner
MR VIRENDRA BAHETI for Petitioner
MR HS MUNSHAW for Respondent

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/02/2004

COMMON ORAL JUDGEMENT

1. The present petition was initially filed for the relief, as set out in paragraph-19(B), which reads thus,

"(B) to quash and set aside the suspension order dated 21st June, 1986 at Ann.'A' and the respondent be directed to reinstate the petitioner into service forthwith and to direct the respondent to treat the period of suspension as duty for all purposes."

2. The petition was filed on 5th November, 1996. After the notice was issued by this Court on 20th January, 1997, returnable on 14th February, 1997, on 5th March, 1997, this Court passed the following order :

"The respondent Panchayat has failed to take any action against the petitioner for nearly 11 years from the date of his suspension. It has also failed to complete the inquiry before 31st March, 1995 as was directed by this Court in Special Civil Application No.12108 of 1993. In fact, the Panchayat has not initiated disciplinary proceedings until January-1996 and for more than one year, the Panchayat has failed to complete the inquiry. In that view of the matter, Rule. Ad-interim order in terms of paragraph-19(C). Direct Service is permitted."

Paragraph-19(C) of the petition reads as under:

"Pending hearing and final order of the petitioner the respondent be directed to revoke the order of suspension dt. 21.6.86 forthwith."

3. Mr.H.S.Munshaw, learned Advocate appearing for the respondent, submitted that pursuant to the order dated 5th March, 1997, the authorities reinstated the petitioner on 25th March, 1997. He further submitted that thereafter, the inquiry was completed and in the inquiry, the petitioner was found guilty and, therefore, order of punishment dated 18th November, 1998 was passed whereby deduction of Rs.150=00 per month from the pension of the petitioner was ordered. He further submitted that the District Development Officer also passed an order dated 26th May, 1999 whereby the period of suspension was to be treated as it is and the petitioner was not to get any benefit for the said period i.e. from 21/06/1986 to 25/03/1997. The petitioner challenged the second order dated 26th May, 1999 by filing an appeal before the Additional Development Commissioner, being Appeal No.15

of 2000, which came to be allowed by order dated 7th August, 2002 whereby the Additional Development Commissioner has quashed the order dated 26th May, 1999. Against the order dated 7th August, 2002 of the Additional Development Commissioner, the District Panchayat has approached this Court by filing Special Civil Application No.13854 of 2003, which is admitted and pending for final disposal.

In the meantime, the petitioner reached the age of superannuation on 31st October, 1998 and, as stated by Mr.Munshaw, he is granted retirement benefits like gratuity, treating the period of suspension to be as it is as the order of the District Development Officer dated 26th May, 1999 was in operation. The petitioner has amended this petition subsequently by adding paragraphs 16.5 to 16.13 and also Clauses C.1 to C.5 in paragraph-19, the prayer clause. Now, it is prayed by paragraph 19.C.1 that "direct the respondent to honour the order dated 7/8/2002 passed in Appeal No.15/2000 by Additional Development Commissioner, Gujarat State, Gandhinagar."

It is prayed in paragraph 19.C.2 to "direct the respondent to treat petitioner as in continuous service without any suspension from 21/6/1986 to 24/3/1997". While, in paragraph 19.C.3, it is prayed that "direct the respondent to give, accordingly, all promotional and other benefits as per the said continuous service without the said suspension period". Prayer made in paragraph 19.C.4. is to "direct the respondent to pay balance retiral benefits to the petitioner accordingly by treating the petitioner to be in continuous service". And, last but not the least, it is prayed for by the petitioner in paragraph 19.C.5 to "direct the respondent to increase the pension of the petitioner by taking the promotional benefits and accordingly higher salary given to the petitioner by treating him to be in continuous service without the said period of suspension".

4. The settled legal position is that once a departmental inquiry results into penalty, the question of regularising the period of suspension does not arise and, therefore, the reliefs sought for are totally misplaced. Still, however, as the petition filed by the District Panchayat is admitted, the said issue will be examined at the time of final hearing of the matter (Special Civil Application No.13854 of 2003). Therefore, the present petition does not survive, the final outcome of the petition filed by the District Panchayat will hold the field. The order of the Additional Development

Commissioner dated 7th August, 2002 is under challenge in that petition. If that petition fails, the petitioner will automatically get the reliefs prayed herein and for that the present petition is not required to be kept pending. In view of that, the present petition is dismissed. Rule is discharged. No order as to costs.

5. The Civil Application No.12133 of 1998 filed seeking the retirement benefits does not survive as it is mentioned by Mr.H.S.Munshaw, learned Advocate for the respondent, that the retirement benefits are already given to the petitioner. The Civil Application No.12133 of 1998 is disposed of accordingly. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

(Ravi R. Tripathi, J.)
kamlesh*